IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12615 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PREMJIBHAI PRAGBHAI KOLI

Versus

GUJARAT ELECTRICITY BOARD

Appearance:

1. Special Civil Application No. 12615 of 2004

MR DA SURANI for Petitioner No. 1

MR AD OZA for Respondent No. 1

RULE NOT RECD BACK for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 11/01/2005

ORAL JUDGEMENT

1. Heard ld. counsel Mr. Surani for the petitioner and ld. counsel Mr. AD Oza for the respondents.

2. By invoking jurisdiction of this Court under Article 227 of the Constitution of India, the petitioner has challenged the legality and validity of the order dated 31.07.2004 passed by ld. Civil Judge (S.D.), Botad below application exh.7 in Reg.Civil Suit No.7/2004 whereby application exh.7 preferred by the applicant Premjibhai Pragjibhai -real brother of the defendant Trikambhai Pragjibhai seeking permission to defend the suit on behalf of defendant Trikambhai Pragjibhai who is mentally ill, as best friend of defendant Trikambhai, came to be rejected. It is submitted by ld. counsel Mr. Surani that this Court should exercise supervisory jurisdiction and direct the trial Court to see that the defendant of the suit being a person having ill-health, may defend himself through his guardian and/or a best friend.

3. Reg.Civil Suit No.7/2004 is filed by the respondent Gujarat Electricity Board through its Botad Sub Division and on service of summons to defendant Trikambhai who is a mentally disabled person, his real brother Premjibhai Pragjibhai appeared before the Court and filed an application exh.7 praying that he may be appointed as a Guardian/ Best Friend of the defendant in view of the mental status of the defendant as per the Scheme of O.32 R.3 R/w R.15 and Sec.151 of CPC. Ld. Civil Judge, by referring sec.54 of The Mental Health Act, rejected the said application vide impugned order. In the order under challenge, it is observed by the ld. Civil Judge that unless the competent court certifies that defendant is a person of unsound mind or mentally ill, no guardian/ best friend can be appointed and in absence of such declaration, exh.7 application is not sustainable.

4. Undisputedly, applicant Premjibhai had produced necessary documents like medical certificate given by a Psychiatric and bills of medicines that are purchased for defendant Trikambhai and statements on oath. In the statement on oath by Premjibhai Pragjibhai, he has contended that his brother is of unsound mind and is being attended by him and his family members. The suit was brought for managing the property of defendant Trikambhai. As electricity connection was in the name of Trikambhai, he has been joined as defendant. So, to protect the interest of a person who is mentally ill, his real brother Premjibhai has prayed to grant necessary permission so that he can meet with the allegations made in the plaint. On the contrary, it was the duty of the plaintiff to see that the defendant is represented by an abled person who can protect the interest of the defendant. Plaintiff being a statutory body,the officers of the plaintiff Board might not have been aware

otherwise they must have tried to serve the summons through his guardian and/or best friend.

5. It is rightly argued that this is a case of grave error committed in judicial proceedings. It is also rightly submitted that the plaintiff may succeed in the suit fully in absence of any proper assistance or response from the defendant who is mentally ill.

6. For short, the ld. Civil Judge has committed gross and serious error in not allowing the application exh.7 and therefore the present petition requires to be allowed.

7. In the result, present Spl.Civil Application is hereby allowed. The impugned order dated 31.07.2004 passed by ld. Civil Judge (J.D.), Botad below application exh.7 in Reg. Civil Suit No.7/2004 rejecting the said application is hereby quashed and set aside. Application exh.7 is hereby allowed and applicant of application exh.7 namely Shri Premjibhai Pragjibhai who is real brother of defendant Trikambhai who is mentally ill, is hereby appointed as the Best Friend of defendant Trikambhai who is mentally ill and in the capacity of Best Friend, he is permitted to defend the suit filed against defendant Trikambhai. Rule is made absolute accordingly. No costs.

[C.K. BUCH, J]

*rawal